IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 18617 of 2006(N)

OS.197/2005 of III ADDL.SUB COURT, KOZHIKODE
.....

PETITIONER:

HAFSA, AGED 48 YEARS,
D/O.KAKKUZHI ABOOBACKER, THEVERKANDIYIL,
KUNNAMANGALAM VILLAGE, KARANTHUR DESOM OF
KOZHIKODE TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT:

P.BEERAN KOYA, AGED 54 YEARS,
S/O.PEECHANARI MOIDEEN KOYA, VALAYANAD AMSOM
AND DESOM OF KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.T.R.RAVI
SRI.P.S.MURALI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.18617/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT DTD. 10/06/2005 IN O.S.197/2005 ON THE FILE OF THE IIIRD ADDITIONAL SUB COURT, KOZHIKODE.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT DTD. 28/09/2005 FILED BY THE DEFENDANT IN O.S.197/2005 ON THE FILE OF THE IIIRD ADDITIONAL SUB COURT, KOZHIKODE.**

EXT.P3: **COPY OF THE AFFIDAVIT DTD. 07/02/2006 FILED IN SUPPORT IN I.A.592/2006.**

EXT.P4: **COPY OF THE ORDER DTD. 13/06/2006 IN O.S.197/2005 ON THE FILE OF THE IIIRD ADDITIONAL SUBORDINATE JUDGE'S COURT, KOZHIKODE.**

/TRUE COPY/

P.S.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C).No.18617 of 2006 N

Dated this the 19th day of July, 2007.

JUDGMENT

Having regard to the rival arguments addressed before me, I am of the view that the question whether the plea raised by the defendant is one of adjustment or of the counter claim will have to be reconsidered by the learned Munsiff in the light of the pleadings, which have been raised by the parties.

2. I, therefore, set aside the impugned order and direct the learned Munsiff to decide that question afresh after hearing both sides. Whether the specific prayer in the application for issuance of a commission should be allowed or not will be decided on the basis of the decision the court takes on the issue as to whether the plea is adjustment or counter claim. Fresh orders, as directed above, will be passed by the learned Munisff, at the earliest and at any rate, within two months of receiving a copy of this judgment.

Writ Petition is disposed of as above.

Sd/-

(PIUS C.KURIAKOSE)
JUDGE

sk/

//true copy//